

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

EMPLOYEE PAINTERS' TRUST  
HEALTH & WELFARE FUND, et al.,

Plaintiff,

v.

SEATTLE STRUCTURES, LLC; JESSE  
HARRISON and JANE DOE  
HARRISON; DAVID BAILEY and  
JANE DOE BAILEY,

Defendant.

CASE NO. 3:11-cv-5265 RBL

ORDER DENYING PLAINTIFFS'  
MOTION FOR SUMMARY  
JUDGMENT

[Dkt. # 43]

THIS MATTER is before the Court on Plaintiffs Employee Painters' Trust Health & Welfare Fund, Western Washington Painters Defined Contribution Pension Trust, Western Washington Apprenticeship and Training Trust, Western Washington Painters Labor Management Cooperation Trust, and Painters and Allied Trades International Union and Industry Pension Fund's Motion for Summary Judgment against Defendants David and Jane Doe Bailey, and Jesse and Jane Doe Harrison [Dkt. #43]. In contracts with the Trust Funds and the International Union of Painters and Allied Trades District Council Number 5, Defendant Seattle

1 Structures, LLC agreed to contribute to the Trust Funds each month. The case arises from  
2 Seattle Structures' failure to do so.

3 The Trust Funds seek summary judgment arguing that Defendants Harrison and Bailey,  
4 Seattle Structures' owners and officers, are personally liable because the contracts with the union  
5 and Trust Funds provided that corporate officers are individually liable for the corporation's  
6 default. Because Harrison and Bailey were not parties to the contracts with the Trust Funds and  
7 union, Plaintiffs' Motion for Summary Judgment is DENIED.

### 8 I. FACTUAL SUMMARY

9 Harrison and Bailey were owners and officers of Seattle Structures, a Washington  
10 corporation with its principal place of business in Gig Harbor.

11 On August 21, 2007, Harrison signed, on Seattle Structures' behalf, a Registration and  
12 Counterpart Agreement with the union. Under that agreement, Seattle Structures agreed to the  
13 labor agreement terms in place between the union and the Northwest Wall and Ceiling  
14 Contractors Association. Seattle Structures also agreed to make certain fringe benefit  
15 contributions to the Trust Funds and abide by the trust agreements' terms and conditions.

16 The labor agreement was the Western Washington Area Agreement for the Drywall  
17 Industry, effective July 1, 2007, through June 30, 2010. It required Seattle Structures to  
18 contribute to the Trust Funds. Seattle Structures agreed to pay liquidated damages, attorney fees,  
19 and collection costs upon delinquency. The labor agreement also incorporated the trust  
20 agreements' terms and conditions.

21 The trust agreements incorporated into the labor agreement were the Employee Painters'  
22 Trust Amended and Restated Trust Agreement, the Western Washington Painters Defined  
23 Contribution Pension Plan, the District Council Number 5 Apprenticeship and Training Trust  
24

1 Agreement, the Restated Agreement and Declaration of Trust Establishing the International  
2 Painters and Allied Trades Industry Pension Fund, and the Western Washington Painters Labor  
3 Management Cooperation Trust Fund.

4 Each trust agreement required that Seattle Structures pay liquidated damages on all  
5 delinquencies, and the trust fund's attorney fees and collection costs. The trust agreements also  
6 provided that an employer's corporate officers would be individually liable for the employer's  
7 delinquency on the trust fund contributions:

8 In recognition that individuals have responsibilities in a corporation which is a  
9 participating Employer in a Trust, and that contributions are for the welfare of  
10 covered employees, the responsible individuals in a corporation which a  
11 participating Employer shall be individually liable for payment of contributions  
12 and other charges owing under this Article III. Therefore, in the event any  
13 corporate Participating Employer which is obligated to make contributions to the  
14 Trust fails to make such contributions, the President, Treasurer, and any other  
15 corporate officer who is responsible for payment of contributions by the  
16 corporation to the Trust Fund shall be each individually liable for the payment of  
17 contributions and any other amount due under this Article VIII, and other  
18 applicable Federal law, 29 U.S.C. Section 1132(g).

19 Decl. of Jeffrey G. Maxwell, Ex. 5 at 24–25 [Dkt. #44].

20 On May 25, 2010, by executing an Installment Payment Arrangement, Seattle Structures  
21 acknowledged its delinquency in paying contributions, liquidated damages, and other charges to  
22 the Trust Funds, totaling \$47,699.62, from December 2009, through April 2010. Bailey signed  
23 the Arrangement on Seattle Structures' behalf. On September 27, 2010, Seattle Structures  
24 executed a Revised Installment Payment Arrangement acknowledging it was delinquent and  
owed \$60,823.39, from December 2009, through May 2010. Bailey signed the Revised  
Arrangement.

Seattle Structures defaulted on December 15, 2010. On April 7, 2011, the Trust Funds  
sued Seattle Structures, Bailey, and Harrison, alleging liability for fringe benefit contributions

1 and ancillary charges owing under the labor and trust agreements, to which Seattle Structures  
2 was a party. The Trust Funds also alleged violations of ERISA (29 U.S.C. § 1145). The Trust  
3 Funds served Bailey and Harrison with requests for admission, to which Bailey and Harrison did  
4 not respond. On January 4, 2012, the Trust Funds sought summary judgment against Seattle  
5 Structures, which was granted. The Trust Funds now seek summary judgment against Bailey  
6 and Harrison, seeking \$122,080.26, plus attorney fees and collection costs. Bailey and Harrison  
7 did not file a response.

## 8 **II. DISCUSSION**

9 Summary judgment is appropriate when, viewing the facts in the light most favorable to  
10 the nonmoving party, there is no genuine issue of material fact which would preclude summary  
11 judgment as a matter of law. Once the moving party has satisfied its burden, it is entitled to  
12 summary judgment if the non-moving party fails to present, by affidavits, depositions, answers to  
13 interrogatories, or admissions on file, “specific facts showing that there is a genuine issue for  
14 trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). “The mere existence of a scintilla of  
15 evidence in support of the non-moving party’s position is not sufficient.” *Triton Energy Corp. v.*  
16 *Square D Co.*, 68 F.3d 1216, 1221 (9th Cir. 1995). Factual disputes whose resolution would not  
17 affect the outcome of the suit are irrelevant to the consideration of a motion for summary  
18 judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). In other words,  
19 “summary judgment should be granted where the nonmoving party fails to offer evidence from  
20 which a reasonable [fact finder] could return a [decision] in its favor.” *Triton Energy*, 68 F.3d at  
21 1221.

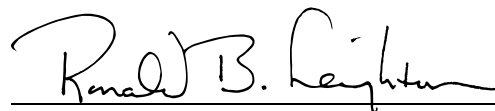
22 The Trust Funds argue that Seattle Structures agreed to abide by the trust agreements’  
23 terms and conditions in the Counterpart Agreement that Harrison signed. They argue that the  
24

1 trust agreements unambiguously provide that an employer's corporate officers are individually  
2 liable when the employer fails to contribute to the trust funds, and that, because Harrison and  
3 Bailey are corporate officers of Seattle Structures, they are individually liable. The Trust Funds  
4 claim that Harrison's signature on the Counterpart Agreement proves his knowledge of the trust  
5 agreements' terms and conditions and Bailey's signature on the installment payment  
6 arrangements proves his knowledge of Seattle Structures' obligations under the trust agreements.

7 Although the trust agreements' corporate officer provision is unambiguous, Harrison and  
8 Bailey did not sign those agreements. The documents that Harrison and Bailey did sign did not  
9 explicitly say that they personally guarantee that Seattle Structures will contribute to the Trust  
10 Funds. Accordingly, a genuine issue of material fact exists regarding whether Harrison and  
11 Bailey ever personally guaranteed that Seattle Structures would contribute to the Trust Funds.

12 The Trust Funds also argue that Harrison and Bailey admitted liability by failing to  
13 respond to the requests for admission. However, even if the Court considers the requests  
14 admitted, they do not show whether Harrison or Bailey are personally liable for Seattle  
15 Structures' delinquency because the requests pertain to the Counterpart Agreement and the  
16 installment payment arrangements. Although Harrison and Bailey did not respond to the motion,  
17 the Trust Funds have not met their burden because the evidence presented does not show, as a  
18 matter of law, that Harrison and Bailey are personally liable for Seattle Structures' failure to pay  
19 the Trust Funds. Accordingly, Plaintiffs' Motion for Summary Judgment is DENIED.

20 Dated this 29th day of July, 2012.

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23 Ronald B. Leighton  
24 United States District Judge